

The witness chiefly relied upon to prove that Cross was in truth the principal in the obligation to McKenna and Company, is Charles Griffith, who says that when the instrument was executed, Cross admitted there was some unsettled business between him and Stewart, and that he offered to sign first, remarking, if he signed first it would make him principal, and the witness understood from the conversation of the parties that Cross was to pay the debt for Stewart, but the witness did not hear Cross say why he was to pay it. It was also proved by John H. Brown that Cross told him that he intended to pay the debt due from Stewart to McKenna and Company; that he was indebted to Stewart, and thought it was his duty to do so.

This proof is unquestionably calculated to produce a presumption that as between Cross and Stewart, the former was the principal debtor in the obligation to McKenna and Company, and but for some other circumstances which are scarcely reconcilable with this state of things, it would be extremely difficult to resist the conclusion. Exceptions have been filed by the solicitor of Brown to this proof upon the ground that it is an attempt to prove by parol the liability of Cross to pay the debt of another, which cannot be done. The proof, however, does not appear to me to be exposed to this objection. It is not an effort to show by parol evidence the liability of one party for the debt of another, but to show by such proof which of two parties to a pecuniary obligation binding upon both is the principal debtor, so as to adjust the equities as between themselves, a thing of common occurrence in this court.

But the circumstance which, in my judgment, militates most strongly against the conclusion which Stewart seeks to establish by his proof, is the time which he has suffered to elapse before he brought this claim forward. The debt to McKenna and Company matured in 1840, the year in which Cross died. Suits were brought against his administrators, of whom Stewart was one, and against himself individually, and judgment was recovered in 1842, and the money paid by him in 1843, and yet it is not until 1847, four years subsequently, that he sets it up as a claim against the estate of Cross. In answer to this im-